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OFFICE OF PETITIONS

In re Application of :
Shuster et al. :
Application No. 10/816,663 : DECISION ON PETITION
Filed: April 2, 2004 :
Attorney Docket No. 2003.027 US/AH06021US01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 8, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action mailed June 17, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on September 18, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and fee of \$540.00; (2) the petition fee of \$1,620.00; and (3) a proper statement of unintentional delay.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

Additionally, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,110.00, three-month extension of time fee submitted with the petition on January 8, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's deposit account in due course.

Petitioner also submitted an additional \$540.00 with the instant petition. As it is unnecessary, it will be refunded to petitioner's deposit account in due course.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 1617 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions